FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 17 1939
CHARLES ELMORE CROPLEY
CLERK

No. 176

In the Supreme Court of the United States

OCTOBER TERM, 1939

HAGGAR COMPANY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 176

HAGGAR COMPANY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

Pursuant to Section 215 of the National Industrial Recovery Act, c. 90, 48 Stat. 195, 207–208, the taxpayer, a Texas corporation, on August 22, 1933, filed a capital stock tax return for the year ended June 30, 1933, in which it reported that the original declared value of its capital stock was $120,000 (R. 12). Within the time for filing capital stock tax returns for the year ended June 30, 1933, as extended by Treasury Decisions 4368 and 4386, 32

169011—39

Treasury Decisions, Internal Revenue, 40. 71, the taxpayer on September 28, 1933, filed a second capital stock return in which it declared the value of its capital stock to be $250,000 (R. 13). On March 15, 1934, the taxpayer filed its income and excess profits tax return for the calendar year 1933 and inadvertently computed the excess-profits tax due under Section 216 of the National Industrial Recovery Act (48 Stat. 208) on the basis of a value of $370,000 for its capital stock, that amount being the sum of the values declared in the first and second capital stock tax returns (R. 14). The Commissioner held that the value of $120,000 declared for the capital stock in the first capital stock tax return should be used in calculating the excess-profits tax and asserted a deficiency (R. 11, 14). The taxpayer appealed to the Board of Tax Appeals, contending that the value of $250,000 declared in the second capital stock tax return should be used as a basis (R. 2–7). The Board and the court below rejected that contention, holding that the value declared in the first return was controlling (R. 14, 44–48).

Section 216 of the National Industrial Recovery Act provides that the excess-profits tax is to be computed on the basis of the value of the capital stock as declared by the taxpayer in the capital stock tax return filed pursuant to Section 215 of the same Act. The Board and the court below construed Section 215 (f) as not permitting any amendment of the value of the capital stock as de-

clared in the first capital stock tax return filed under Section 215, and accordingly held that the excess-profits tax was to be computed on the basis of the declaration of value made in the capital stock tax return filed August 22, 1933, and not on the basis of the declaration of value made in the second return filed September 28, 1933.

The decision of the court below is in accord with that of the Circuit Court of Appeals for the First Circuit in *Blake and Kendall Co.* v. *Commissioner,* decided June 13, 1939, not yet officially reported but found in 1939 C. C. H., Vol. 4, ¶ 9561. The Board of Tax Appeals has consistently taken the same view. *Blake and Kendall Co.* v. *Commissioner,* decided by the Board of Tax Appeals January 12, 1939, Memorandum Opinion, unreported; *William A. Webster Co.* v. *Commissioner,* 37 B. T. A. 800, now pending before the Circuit Court of Appeals for the Sixth Circuit; *A. J. Crowhurst & Sons, Inc.,* v. *Commissioner,* 38 B. T. A. 1072, now pending before the Circuit Court of Appeals for the Third Circuit.

But the Circuit Court of Appeals for the Sixth Circuit in *Glenn* v. *Oertel Co.,* 97 F. (2d) 495, and the Court of Claims in *Philadelphia Brewing Co.* v. *United States,* 27 F. Supp. 583 (petition for rehearing pending), have held that where the second return was filed before the due date as extended by Treasury Decisions, the value of the capital stock as declared in that return should be used as a basis for the computation of the excess-profits tax.

While we believe that the decision of the court below is correct, we do not feel that the petition should be opposed in view of the direct conflict of decisions.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

AUGUST 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1939